

Commissioner for Patents

REMARKS

Claims 3 and 5-8 remain in the application

Claims 3, 5 and 6 are herein amended.

Claim 4 is canceled from the application.

In Item 3 of the Office action, the Examiner rejects claims 3-6 and 8 under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Brosseau.

The Examiner finds in Ellis support for the 103 rejection for the various components that are in contact with the bone. The Examiner combines Ellis with Brosseau, as Brosseau teaches the tracking of detectable devices. Ellis pertains to a medullary caliper. The medullary caliper is used primarily for two functions, namely, determining a depth of a medullary canal, as well as the diameter at a given depth in the medullary canal. In order to measure the diameter, the caliper of Ellis uses caliper arms illustrated, for instance at 32 and 34. The caliper arms separate from one another as shown in the sequence of Figs. 1-3 to contact the surface of the intramedullary canal. In parallel, a scale 80 is provided, which scale 80 indicates a numerical value representing the spacing between the arms 32 and 34.

Despite being insertable in a medullary canal, it is clear that the device of Ellis is not concerned with digitizing an axis of the intramedullary canal, as is the apparatus of claim 3. One requirement for the digitization of an axis of the intramedullary canal is that the leading end of the stem portion be precisely **centrally located** in the intramedullary canal. To precisely centrally locate the leading end of the stem portion in the intramedullary canal, the apparatus of claim 3 features fingers having **pointy tips**, which pointy tips are **equidistantly spaced** from the stem portion.

These structural limitations are not taught by Ellis, as Ellis is not concerned with the central location. The Ellis caliper can operate with a single one of the arms 32 or 34, as claimed in claim 1 thereof, thereby indirectly indicating that the central location is not necessary. Moreover, as shown in an enlarged view of Fig. 5, the tips of the arms 32 and 34 are rounded off. Accordingly, the caliper of Ellis could not be used to precisely identify a center of the intramedullary canal, and Ellis fails to describe limitations that would be

Commissioner for Patents

required therefor, such as the pointy tips for the fingers and an equidistant space between the stem portion and tips.

Accordingly, claim 3 as currently amended has structural limitations that are absent from Ellis and are not taught by Brosseau.

The Examiner further rejects claim 7 as obvious in view of the combination of Ellis, Brosseau and Kuslich. Claim 7 pertains to a flared adaptor that abuts against a periphery of the opening of the intramedullary canal, and is therefore used to centralize the following end of stem portion of the apparatus within the intramedullary canal. The Examiner argues that Kuslich teaches a flared adaptor at 100 in Fig. 5. However, Fig. 5 shows an annular ring of cylindrical shape and, therefore, without any flared portion. A review of the Kuslich description (col. 7, line 62, to col. 8, line 27) fails to indicate that contact member 100 may have a flared shape. Accordingly, the subject matter of claim 7 is not taught by any of the prior-art references.

In view of the above amendments and remarks, this application is considered to be in condition for allowance, and early notice to that effect is earnestly solicited.

Respectfully submitted,
Herbert Andre JANSEN et al.
By:

September 23, 2010

(Date)

/Pierre T. A.-NGUYEN/

Pierre T. A.-NGUYEN (Reg. No. 55,043)

Agent of Record

OGILVY RENAULT LLP

1 Place Ville Marie, Suite 2500

Montreal, Quebec, Canada H3B 1R1

Tel.: (514)847-4243